



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
8.030

CHAPTER Regulatory Compliance	SUBCHAPTER HIPAA Regulations	EFFECTIVE DATE 6/17/15	NUMBER OF PAGES 6	PAGE NUMBER 1 of 6
SUBJECT Policy: Access to Consumer Protected Health Information by Consumer, Parent, Guardian or Personal Representative		AUTHORITY Section 630.050 RSMo		History See Below
PERSON RESPONSIBLE General Counsel			Sunset Date 7/1/18	

PURPOSE: It is the policy of the Missouri Department of Mental Health (DMH) to protect the privacy of individually identifiable health information in compliance with federal and state laws governing the use and disclosure of protected health information (PHI). DMH recognizes the rights of consumers to access health information pertaining to them in a designated record set as set forth in 45 CFR Section 164.524. DMH further recognizes that access to PHI may be limited or restricted as defined in this policy, in the Notice of Privacy Practices and as allowed by law. In cases where the consumer has been civilly adjudicated as incapacitated (and therefore appointed a guardian) or is a minor, the parent (if a minor), or the legal guardian or personal representative may request access.

APPLICATION: DMH, its facilities and workforce.

(1) DEFINITIONS:

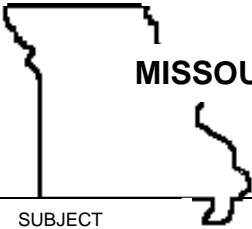
(A) Consumer: Any individual who has received or is receiving services from the Department of Mental Health

(B) Designated record set: A group of records maintained by or for a covered entity from which personal health information is retrieved by the name of the individual or by identifying number

(C) Licensed Health Care Professional: As defined in Section 630.005, RSMo; 9 CSR 30-4.010; and 9 CSR 45-2.010(2)(U). Such professionals may be a licensed psychiatrist; a licensed psychologist; psychiatric nurse; master's degree social worker with specialized training in mental health services (one year of experience under supervision may be substituted for training; a licensed professional counselor); master's or doctorate in counseling, psychology, family therapy or related field with one year's experience related to mental illness; and a doctor of medicine, or registered nurse, or a bachelor's level social worker with one year's experience in working with consumers with developmental disabilities.

(D) Personal Representative: Person with a court order appointing them as guardian or with a valid Power of Attorney signed by the consumer specifying the authority to review and make decisions regarding medical, psychiatric, treatment or habilitation concerns. In the case of juveniles who have consented to treatment for alcohol and drug abuse issues as allowed under Section 431.061, RSMo, they are their own personal representatives

(E) Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained in any form or medium, by a covered entity, health plan or clearinghouse as defined under the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Parts 160 and 164.



MISSOURI DEPARTMENT OF MENTAL HEALTH

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DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
8.030

SUBJECT Policy: Access to Consumer Protected Health Information by Consumer, Parent, Guardian or Personal Representative	EFFECTIVE 6/17/15	NUMBER OF PAGES 6	2 of 6
---	----------------------	----------------------	--------

(F) **Psychotherapy Notes:** Notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Such notes exclude medication prescriptions and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

(G) **Official Signature:** Legal Name, credential, and job title or position description.

(H) **Disclosure of PHI Summary:** An accounting of disclosures of PHI (in paper or electronic format) containing: date of disclosure; name and address of the organization or person who received the PHI; a brief description of the information disclosed; purpose for which the PHI was disclosed.

(2) REQUEST FOR ACCESS TO PROTECTED HEALTH INFORMATION:

(A) A consumer, parent of a minor consumer, and personal representative or legal guardian as relevant to their representation, shall request in writing for access to inspect, or receive copies of, PHI except in those instances covered by Federal Regulation and outlined in the Notice of Privacy Practices acknowledged at admission, and shall further specify the exact information requested for access.

(B) The "Request for Consumer Access to Protected Health Information" form shall be provided to facilitate the request. DMH staff may assist in initiating the process requesting access to PHI.

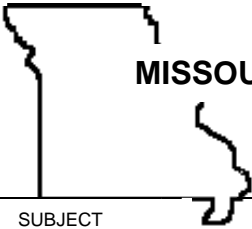
(C) All requests by consumers and their legal representatives for PHI shall be forwarded to the Privacy Officer or designee for action.

(D) If the consumer has agreed in writing to accept a summary of the PHI and agreed to any costs associated with the summary, as documented on the "Request for Consumer Access to Protected Health Information" form, the facility may provide a summary of the PHI to the consumer. The "Request for Consumer Access to Protected Health Information" form shall be filed in the consumer's medical record.

(E) This request shall be provided on paper unless the consumer requests it in electronic format and the PHI exists electronically. The request shall be completed within thirty (30) days of the receipt of the request.

1. If the record cannot be accessed within the thirty (30) days, the timeframe may be extended once for no more than an additional thirty (30) days. The consumer must be notified in writing outlining reasons for the delay and the date the request will be concluded.

(F) Requests for Access to PHI may be denied without a right to review as follows:



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
8.030

SUBJECT Policy: Access to Consumer Protected Health Information by Consumer, Parent, Guardian or Personal Representative	EFFECTIVE 6/17/15	NUMBER OF PAGES 6	3 of 6
---	----------------------	----------------------	--------

1. If the information conforms to one of the following categories: psychotherapy notes; information compiled for use in a civil, criminal or administrative action or proceeding; or information that would be prohibited from use or disclosure under the Clinical Laboratory Improvements Amendments of 1988) laws and regulations;

2. If the consumer is participating in research related treatment and has agreed to the denial of access to records for the duration of the study;

3. If access is otherwise precluded by law;

4. If the information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information. All Victim Notification and Duty To Warn forms, as well as any other documentation that contains demographics of victims or potential victims shall be removed before any review of the record by anyone not employed by the facility or DMH, and if the facility or DMH employee is a consumer worker, then the information shall be removed before any review of the record; or

5. If the facility has been provided a copy of a court order from a court of competent jurisdiction which limits the release or use of PHI.

(G) Requests for Access to PHI may be denied provided the individual is given a right to have the denial reviewed as follows:

1. A licensed health care professional based on an assessment of the particular circumstances, determines that the access requested is reasonably likely to endanger the life or physical safety of the consumer or another person.

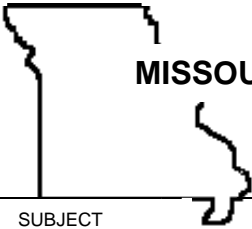
2. The facility may deny the consumer access to PHI if the information requested makes reference to someone other than the consumer and a licensed health care professional has determined that the access requested is reasonably likely to cause serious harm to that other person.

3. The facility may deny a request to receive a copy or inspect PHI by a personal representative of the consumer if the facility has a reasonable belief that the consumer has been or may be subjected to domestic violence, abuse, or neglect by such person; or treating such person as the personal representative could endanger the individual; and the facility, exercising professional judgment, decides that it is not in the best interest of the consumer to treat that person as the consumer's personal representative.

(3) DENIAL OF ACCESS:

(A) Upon denial of any request for access to PHI, in whole or in part, a written letter shall be sent to the consumer, or other legal representative making the request for access, stating in plain language the basis for the denial.

(B) If the consumer has a right to a review of the denial as outlined in subsection (2)(G) above, the letter shall contain a statement of how to make an



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
8.030

SUBJECT Policy: Access to Consumer Protected Health Information by Consumer, Parent, Guardian or Personal Representative	EFFECTIVE 6/17/15	NUMBER OF PAGES 6	4 of 6
---	----------------------	----------------------	--------

appeal of the denial including the name, title, address, and telephone number of the person to whom an appeal should be addressed. This letter shall also address the steps to file a complaint with the Secretary of the U.S. Department of Health and Human Services (HHS), Region VII, Office of Civil Rights.

(C) If the information requested is not maintained by the facility or DMH, but it is known where the consumer may obtain access, the facility or DMH must inform the consumer where to direct the request for access.

(4) APPEAL AND REVIEW OF DENIAL OF REQUESTS AS DEFINED IN SUBSECTION (2)(G).

(A) A consumer, parent of a minor, or guardian of a consumer has the right to appeal the decision to withhold portions or all of the record for safety or confidentiality reasons.

(B) The appeal shall be submitted in writing to the Chief Operating Officer/Director of the facility, who will designate a licensed health care professional. If the appeal is to Central Office concerning any information maintained by Central Office, the designated division licensed health care professional will be assigned to the review.

(C) The designated licensed health care professional who did not participate in the original decision to deny access shall review the record and the "Request for Consumer Access to Protected Health Information" form.

1. The reviewer shall determine if access meets an exception as described in Section 2.

2. If the reviewer determines that the initial denial was appropriate, the consumer shall be notified in writing, using plain language, that the review resulted in another denial of access. The notice shall include the reasons for denial and shall describe the process to make a complaint to the Secretary of HHS.

3. If the denial was not appropriate, the licensed health care professional who acts as the reviewer shall refer the request to the facility or Central Office Privacy Officer or designee to make the record available.

4. If access is denied to any portion of the PHI, access must still be granted to those portions of the PHI that are not restricted.

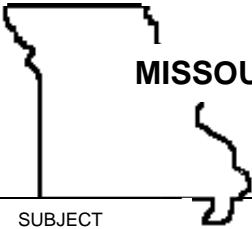
5. The facility or Central Office Privacy Officer is bound by the decision of the reviewer.

(5) PROVISION OF ACCESS AND FEES:

(A) If DMH or a facility provides a consumer or legal representative with access, in whole or in part, to PHI, the facility shall comply with the specifications as outlined in federal regulations to the extent of

the facility's capabilities and as identified in that facility's Notice of Privacy Practices.

1. Requested information shall be provided in designated record sets.



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
8.030

SUBJECT Policy: Access to Consumer Protected Health Information by Consumer, Parent, Guardian or Personal Representative	EFFECTIVE 6/17/15	NUMBER OF PAGES 6	5 of 6
---	----------------------	----------------------	--------

2. If the requested information is maintained in more than one designated record set or in more than one location, the facility only needs to produce the information one time in response to the request.

3. The facility may provide a summary or explanation of the requested PHI if:

A. The consumer agrees in advance to the summary or explanation in place of the record.

B. The consumer agrees in advance to any fees imposed for the summary or explanation.

C. These agreements shall be documented as set forth in subsection (2)(D) above.

4. If the requested information is maintained electronically and the consumer requests an electronic or faxed copy, the facility shall accommodate the request if possible and shall explain the risk to security of the information when transmitted as requested.

5. If the information is provided electronically, the consumer shall be advised in advance of any charges for the electronic storage device and for mailing the device. DMH shall establish a reasonable cost for the duplication of this information on an electronic storage device.

6. If the information is not available in the format requested, the facility shall produce a hard copy document or other format agreed upon by the consumer and facility.

(B) The facility shall provide the access requested in a timely manner and arrange for a mutually convenient time and place for the consumer to inspect the PHI or obtain copies, unless access by another method has been requested by the consumer and agreed to by the facility as set forth in subsection (5)(A)(4) above. Any requests for accommodations shall be sent or given in writing to the Privacy Officer or designee.

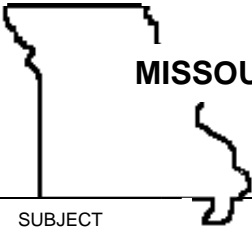
(C) Any fee charged shall be in compliance with the current Missouri State Statute (See Section 191.227, RSMO), and federal law, and may be reduced based upon ability to pay.

(6) RELEASE OF PROTECTED HEALTH INFORMATION OF A DECEASED CONSUMER:

(A) The PHI of a deceased consumer may only be released via a Probate Court order from the County Circuit Court where the deceased resided or from another Probate Court in the State of Missouri, or by a Court Order in compliance with the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 160 and 164.

(B) Upon request to obtain information, the Privacy Officer or designee shall ask for a copy of the Probate Court Order.

(7) REVIEW PROCESS: Information shall be collected from the facility Privacy Officers annually to monitor compliance and identify any issues with this DOR.



MISSOURI DEPARTMENT OF MENTAL HEALTH

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DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
8.030

SUBJECT Policy: Access to Consumer Protected Health Information by Consumer, Parent, Guardian or Personal Representative	EFFECTIVE 6/17/15	NUMBER OF PAGES 6	6 of 6
---	----------------------	----------------------	--------

(8) SANCTIONS: Failure of staff to comply or assure compliance with the DOR may result in disciplinary action, including dismissal.

(9) There shall be no facility policies pertaining to this topic. This Department Operating Regulation shall control.

(10) ATTACHMENT: Request for Consumer Access to Protected Health Information form.

HISTORY: Original DOR effective date January 1, 2003. Final DOR effective June 1, 2003. Amendment effective July 1, 2006. On July 1, 2009, the sunset date was extended to July 1, 2012. Amendment effective June 22, 2012. Amendment effective June 17, 2015.

**STATE OF MISSOURI****DEPARTMENT OF MENTAL HEALTH****REQUEST FOR CONSUMER ACCESS TO PROTECTED HEALTH INFORMATION**

Consumer Name and Date of Birth:

Statewide ID/Local Facility ID

Consumer Address: Street number, Street name, City, State, Zip Code; SSN

Please specify the information requested:

Please specify the format for information requested: Paper ____ Computer disk ____ Fax ____
(Note that not all formats may be available) Flash Drive ____

I agree to accept a summary of the Protected Health Information No ____ Yes ____

I agree to pay costs associated with this request for access to Protected Health Information
No ____ Yes ____

Please indicate the consumer, parent of a minor, or any legal guardian or personal representative
who is requesting access

Individual's Name

Relationship to Consumer

Signature of Consumer or Legal Representative

Date

Missouri Department of Mental Health Use Only

Date Received _____

Access has been: granted ____ denied ____

Comments:

IF denied, letter of denial provided to consumer on _____(date)

Reason(s) for denial without right of review:
(check all____ Psychotherapy Notes
that apply)____ Patient agreed to denial of access while in
research project____ Information for use in civil, criminal or
administrative proceedings____ Information obtained from source other
than facility under promise of
confidentiality and access would identify
the source.

____ Other:

Reason for denial with right of review:

____ Reasonably likely to endanger life or
physical safety of consumer/other person____ Documentation makes reference to
third party and granting access is likely to
cause serious harm____ Personal representative is requesting
Party, and consumer has been or may be
subject to domestic viol./abuse/neglect

Name and Title of Staff Member processing request

Signature of Health Care Provider

Date